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## REVIEWS AND CRITICISMS.

GESCHICHTE DER DEUTSCHEN RECHTSWISSENSCHAFT. *Ernst Landsberg.*  
Division III, Part II. Text, 1008 pp. Notes, 414 pp. Munich  
and Berlin, 1910.

This is the last installment of the monumental work on the History of German Legal Science published under the direction of the Historical Commission of the Royal Academy of Science of Bavaria. The first and second divisions of the work (1070 pp.), which were prepared by Roderich v. Stintzing, professor of law at the University of Bonn, and appeared in 1880 and 1884 respectively, brought down the history to the second half of the 17th century. After Professor Stintzing's death, his pupil and friend, Dr. Landsberg, was asked to continue the work. Part I of the third division of the history (878 pp.), covering the period of the 18th century Law-of-Nature School, was published in 1898. The present volumes, with which the work concludes, trace the history of German legal science from the beginning of the 19th century to the time of the Empire and the preparation of the modern codes, that is, to about the year 1870.

Breaking off the history at the point mentioned, the author has as the central theme of this portion of his work the rise and decline of the Historical School. By way of introduction, so to speak, the author details in two chapters the status of private and public law in Germany at the beginning of the 19th century. In the first chapter (Ch. 13) Hugo and Thibaut appear as the leading figures. Through works of a profound, independent and methodological character, Hugo opened up for German jurisprudence the deep fountain of Kantian thought. "For this reason he occupies in the history of positive jurisprudence the place which belongs to Kant in the history of all sciences." (P. 48.) With Hugo, therefore, began the modern era in German jurisprudence.

In Thibaut we meet the greatest civilist of his day, though he is known more widely today as the opponent of Savigny, by reason of his advocacy of the codification of the law. Opposed to the exaggerated notions both of the 18th century Law-of-Nature School, and those of the Historical School, he became the founder of the School of Scientific Positivism, which retained a strong following throughout the period under review.

In the second chapter (Chapter 14) the author discusses the writers on public law—criminal law (Feuerbach, Grolman), procedure (Gönner, Martin), constitutional, international and feudal law (Klüber, Pätz), and canon law. Feuerbach freed criminal law from the fetters of the Law-of-Nature School and arbitrariness. In "Revision der Grundsätze und Grundbegriffe des positiven peinlichen Rechts (2 vols., 1799, 1800)" he applied the psychology and ethics of Kant to criminal law. Through this important work and numerous other writings he created modern criminal law.

Chapter 15 is devoted to the founding of the Historical School by Savigny, to a discussion of its program and its superiority over the

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Law-of-Nature School. Revolutionary in the history of German legal science were Savigny's Law of Possession (1803), his History of Roman Law in the Middle Ages and his System of Roman Law. Eichhorn was the co-founder with Savigny of the Historical School. His investigations were in the field of old German law, a branch of law which through him became an independent juristic discipline.

Part I of the following chapter shows us the earlier fruits of the Historical School in the field of Roman law, old German law, and feudal, canon and criminal law. The rest of the chapter is devoted to a discussion of tendencies in legal science opposed to the Historical School. Hegel is presented as the only intellectual power in Germany at the beginning of the 19th century able to cope with romanticism, Savigny, and the Historical School. After outlining Hegel's philosophy of law and history, the author gives an account of the work of two leading jurists belonging to the Hegelian school—Gans and Stahl. The narrative then takes us to the representatives of the Positivist School (Mühlenbruch, Linde, Bayer and Wächter). In Wächter we find "one of the greatest German jurists of all times." He had become "almost in his lifetime a legendary person of such authority and popularity that Windscheid could say in 1879: 'If he were not an old man, he would have been the only person whom people would have trusted—whom they would have liked to appoint as dictator *legibus scribundis*—as the sole drafter of a German civil code.'" (P. 387.) Wächter was throughout his long career as a jurist a scientific positivist in the truest sense. He embodied in his person the virtues of the Historical School, and yet he maintained his independence with respect to that school by his emphasis on the practical and positive, by his appreciation of the necessity of legislation and of legislative problems, and by his aversion to romantic exaggeration. Scientific positivism found pure expression also in Wächter's works on criminal law, a branch of the law which was soon to pass under the sway of Hegelianism. The chapter concludes with Mittermaier, whose reputation in his lifetime both in Germany and abroad was scarcely less than that of Savigny. The author admits that such an estimate of Mittermaier contains a gross exaggeration; but he defends him against the unjust criticism to which by way of reaction his life work has since been subjected. According to our author Mittermaier's main contribution to the law is to be found not in his literary productions, but in his influence upon legislation and the practice.

In Chap. 17 we reach the height of success of the Historical School. We see also that through the powerful personality of Puchta a new direction was given to the Historical School as founded by Savigny, and limitations were placed upon it, which, while they carried the School to the height of its fame, were calculated inevitably to produce a reaction. "A school which accepted his (Puchta's) principles had really no right to call itself a Historical School—so strongly predominated with Puchta the formal-imperative, the dialectic-reasonable element." (P. 459.) Notwithstanding this, Puchta was readily accepted as the second head of the Historical School. With Puchta the cult of an idealistic jurisprudence gained predominance. In the second

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part of Chapter 17 the lives and writings of other Romanists, chief among whom are Rudorff, Keller and v. Bethmann-Hollweg, are discussed. In Part III follows an account of the split in the Historical School—between the Romanists and the Germanists. It was inevitable that the jurists devoted to the study of Germanic law incited by a spirit of nationalism, should in time become the bitter opponents of the champions of a foreign system. The leader in the attack was Beseler. Parts IV, V and VI deal respectively with other Germanists (Bluntchli, etc.), with writers on civil procedure (J. W. Planck, etc.), and with writers on canon law (Richter, Friedberg, Hinschius, etc.).

In Chap. 18 the history of the Historical School is interrupted so that the influence of Hegelianism and of positivism during the period just traversed may be shown. In tracing the influence of Hegelianism upon juristic thought, the author discovers the curious fact that in private law it led to a strict doctrine of positivism, while it invited philosophic speculation in criminal law. The positivist writers on German common law are classified into those representing speculative positivism (Christiansen, Kierulff), into those whose positivism is based upon the decisions of the courts (Seuffert, Sintenis), and into those whose positivism is based upon the *Corpus Juris Civilis* (Vangerow). Next are considered the writers on territorial law, including Wächter, the writers on the law of bills of exchange and commercial law (Einert, Liebe, Thöl, Biener), Otto Bähr, writers on public law and philosophy of law, (Pütter, Heffter, Ahrens, Zachariae), and the writers on criminal law under the influence of Hegel (Abegg, Köstlin, Berner, Hälschner, Geyer, John, Merkel, v. Holtzendorff). The chapter concludes with the last Hegelians, Lorenz v. Stein and Ferdinand Lassalle.

The next chapter (Chapter 19) is entitled "The Crisis of the Historical School." Toward the middle of the 19th century the Historical School as such came to an end. Its aim had been to build up an idealistic jurisprudence. The Romanists had sought to rear it on the basis of classical Roman law; the Germanists on the basis of old German law—without reference to the practical requirements of their time. A reaction set in with v. Ihering, the powerful advocate of a practical jurisprudence. Contrary to the individualistic view point, then prevailing, of the Hegelian School, Ihering insisted upon the fundamental doctrine that law exists for the protection of *social* interests. Associated with Ihering in the movement was the Germanist Gerber. Bruns, Delbrück and Arnold occupy a position half-way between Ihering and Gerber, on the one hand, and the old school of jurists, on the other hand.

In the last chapter the author considers the work of the jurists whose main activity falls between the years 1850 and 1870. The Historical School as such was dead, but the historical method developed by it was to remain its priceless contribution to jurisprudence. It found recognition in all branches of the law, even in those where it had not met with favor before. Through the labors of Zachariae v. Lingenthal, Leist, v. Ihering, Ficker, Maurer, Brunner and Sohm, the historical study was extended beyond that of Roman and German law to Aryan law, Graeco-Italian law, Frankish-Norman law, and Scan-

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dinavian and English law. The principal other jurists considered in the chapter are Kuntze, Brinz, Bekker, Windscheid (common law), Mommsen (history of Roman law), Paul Roth, Ficker, Stobbe, Gierke (German law), Unger, Dernburg (territorial law), Goldschmidt, Endemann (commercial law), Bülow (civil procedure), Glaser (criminal law and procedure), Gneist (administrative law), Schulze, Laband, G. Meyer (constitutional law), v. Bulmerincq (international law).

The preceding outline includes only the names of the more prominent jurists discussed. The aim throughout the work has been to give a comprehensive account of German legal science at the different periods of its development, and this aim has been faithfully pursued in the last part of the work, notwithstanding the vastness of the material to be digested. Biographical statements and a description of their principal works may be found concerning most of the writers mentioned, either in the text or in the elaborate notes. With regard to the leading jurists the author takes special pains to trace the influence of the home and of the university so that the philosophic attitude of the writer may be more readily comprehended; and in the discussion of the works of a particular writer there is depicted the history of his growth and development to the maturity of his powers. On every hand our author points out the relation of the different works of the same jurist to each other, and their relation to and influence upon juristic science in Germany.

The work on the History of German Jurisprudence by Stintzing and Landsberg is truly a monumental work, the like of which does not exist in any other country. No one unacquainted with the boundless mass of juristic literature covered by the volumes under consideration can form a mental picture of the enormous amount of labor that our author has had to perform. All interested in German jurisprudence owe a debt of gratitude to Dr. Landsberg for having undertaken and so well performed such an arduous task.

E. G. LORENZEN.

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FESTBAND ANLASSLICH DES 25 JAHRIGEN BESTEHENS DER INTERNATIONALEN KRIMINALISTISCHEN VEREINIGUNG. Bulletin der Internationalen Kriminalistischen Vereinigung, Bd. XXI, Heft I, edited by Dr. Ernst Rosenfeld, Berlin, 1914. Pp. 443.

It is extremely difficult to give in brief a concept of the multifarious themes developed in this memorial collection. A common thread, however, runs through the whole volume; that thread is the inspiration which the I. K. V. has communicated to its members in many countries. The book is a collection of papers commemorative of the 25th anniversary of the Union. Thirty notable men have collaborated in it. Appropriately enough the opening paper is a brief history of the founding of the Union by Professor von Liszt, to whom with Van Hamel, of Amsterdam, and Prins, of Brussels, credit is due for the original conception of the Union. The I. K. V. grew, von Liszt says, from his editorial contacts with contributors to the *Zeitschrift für die gesamte Strafrechtswissenschaft*, which he and Doehow founded in 1881. In 1888 he, van Hamel and Prins drew up the statement of